IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 597 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAHIDKHAN MOHAMMEDKHAN PATHAN - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR.DEVANG D DAVE appointed by Legal Aid Committee for Appellant
MR RC KODEKAR ADDL. PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Appellant ('the accused' for short) was charged and tried by the learned Additional Sessions Judge, Court No.5, City Sessions Court, Ahmedabad, in Sessions Case No.224 of 1999 for commission of the offences punishable under Sections 8 (c) read with Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act' for short) arraigned on charge of having been found with contraband article 'brown sugar' when he was apprehended on 23.6.1999 by Vijaysinh Laxmansinh Chauhan, Police Inspector of CID State Narcotic Cell, Ahmedabad, during his duty hours. At the end of trial, the accused has been held guilty to the charge as his complicity is proved and therefore trial Court has convicted him vide judgment and order dated 28.4.2000 for the offence punishable under Section 8 (c) read with Section 21 of the NDPS Act and sentenced him to suffer R.I. for ten years and fine of Rs.1 lac and in default of payment of fine, further RI for six months.

2. The prosecution case, as disclosed from the FIR and unfolded during trial, is as under:

2.1. On 23.6.1999, Vijaysinh Laxmansinh Chauhan, Police Inspector, CID State Narcotic Cell, Ahmedabad was on duty and at that time he received a secret information from an informant that one person, namely, Jahidkhan aged about 35 years, resident of Dani Limda, in the huts of Ganjsahid Kabrastan, who was described as swarthy with black beard and sword-cut mustache with black hair, wearing printed full sleeve shirt and sky-blue pantaloons, was to come from Narol Circle to Chandola Lake on foot between 4.00 and 5.00 P.M. with brown sugar. On receipt of the said information, Vijaysinh Laxmansinh Chauhan made an entry in this regard in the Batmi Register (information register). Thereafter he intimated about the receipt of the said information to his higher officer. Thereafter preparation was made to proceed for raid. Other police officials from Narcotic Cell and panchas

were also called upon. Thereafter necessary equipments were taken with them and thereafter they proceed for raid and preliminary panchnama was prepared in that regard. Thereafter they proceeded for raid in police vehicles and when they reached near Chandola Lake, the police vehicles were parked in such a manner that nobody can see them. Thereafter, members of the raiding party came near the wall of PWD Inspection Bungalow, situated near Chandola Lake and scattered there for keeping watch on the road. At about 16.15 hours it was found that a person satisfying all the descriptions given in the secret information was coming on foot from Narol Circle. During search of the said person, from his possession 40 grams of brown sugar was recovered. Before his search was made, he was asked whether he would like to be searched in presence of a First Class Magistrate or a Gazetted Officer to which he said 'No'. In this regard an entry was made by Vijaysinh Laxmansinh Chauhan. The search and seizure was made under the panchnama in presence of the panchas. It was

found that the accused was not having any permit or licence to keep the narcotic drug and, therefore, the accused was arrested and the matter was further investigated.

2.2. After the raid was over, a complaint against the accused was registered in the Narcotic Cell for commission of the offences alleged against him which is at Ex.50. Thereafter necessary formalities for sending the muddamal to FSL were carried out in presence of Panchas.

2.3. Pursuant to the filing of the complaint, investigation was put into motion. Further investigation was handed over to P.W.5, Uttamkumar Manilal Jadav, PSI, Ex.30. During the course of investigation, muddamal contraband article was entrusted to P.W.3, Baldev Chhanaji Mena, ASI, Ex.26, who sent the sample to FSL for chemical analysis.

2.4. On receipt of the report from the FSL to the effect that the contraband article was brown

sugar, charge-sheet was filed against the accused for commission of the offence under the NDPS Act before the Chief Metropolitan Magistrate, Ahmedabad. As the offence under the NDPS Act is exclusively triable by the Court of Sessions, the learned Chief Metropolitan Magistrate committed the case to the City Sessions Court, Ahmedabad.

2.5. The learned Additional Sessions Judge, Court No.5, City Sessions Court, Ahmedabad, to whom the case was made over for trial, framed the charge against the accused for commission of offence under Section 8 (c) read with Section 21 of the NDPS Act which was read over and explained to the accused. As the accused pleaded not guilty to the charge and claimed to be tried, he was put to trial and tried in Sessions Case No. 224 of 1999.

2.6.In order to bring home the charge levelled against the accused, the prosecution has examined in all five witnesses and recorded their oral testimony, the details of which have been given

in paragraphs 4 of the impugned judgment and order as under:

PW No.	Name	Status	Ex.No.
1	Laxman Shankar Rao	Panch witness	9
2	Vijaysinh Laxmansinh Chauhan	P.I.	10
3	Baldev Chhanaji Mena	A.S.I.	26
4	Vakhatsinh Jethisinh Solanki	P.S.O.	28
5	Uttamkumar Manilal Jadav	P.S.I.	30

2.7. To prove the culpability of the accused, the prosecution has also produced a number of documentary evidence which are described in paragraph 5 of the impugned judgment and order. They are as under:

Sr. No.	Particulars	Ex.No.
1	Copy of entry made in register regarding secret information	--
2	Entry made in station diary	12
3	Muddamal Pati	13
4	Report made u/s. 157 of the Code of Criminal Procedure	14
5	Complaint	15
6	Panchnama	16

Sr. No.	Particulars	Ex.No.
7	Copy of intimation given to the higher official about secret information	17
8	Intimation of grounds for search	18
9	Seizure memo	19
10	Intimation of arrest	20
11	Intimation of arrest to relatives of the accused	21
12	Report of successful raid made to higher official	22
13	Copy of report made to the Metropolitan Magistrate	23
14	dispatch note	24
15	FSL receipt	27
16	FSL report	31
17	Letter of handing over of further investigation	25

2.8. After recording of the evidence of the prosecution witnesses was over, the trial court explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section 313 of the Code of Criminal Procedure ('the Code' for short). In his further statement the accused denied the case of the prosecution in toto and claimed that he is totally innocent.

2.9.On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution, the trial court held that the prosecution has proved its case beyond reasonable doubt. The prosecution has also been able to prove its case beyond reasonable doubt regarding compliance of the mandatory provisions of the NDPS Act. Therefore, complicity of the accused is established. The trial court, therefore, convicted the accursed for the offence punishable under Section 8 (c) read with Section 21 of the NDPS Act and after hearing the accused on the quantum of sentence, the accused is sentenced to suffer RI for ten years and to pay fine of Rs.1 lac and in default of payment of fine, further RI for six months, giving rise to instant appeal under Section 374 of the Code, at the instance of the accused, which is sent from jail.

3. Mr. Devang D. Dave, learned advocate appointed by Legal Aid Committee to assist the

accused, has contended that the impugned judgment and order of conviction is based on conjectures and surmises and against the evidence on record. According to him, P.W.1, Laxman Shankar Rao, Panch witness, Ex.9, has not supported the prosecution case and, therefore, recovery of contraband article is not proved. He has also emphasised that necessary mandatory provisions under the NDPS Act have not been complied with by the investigating officer which is fatal to the prosecution case. Therefore, according to him, complicity of the accused in commission of the offence has not been proved. Therefore, the impugned judgment and order convicting and sentencing the accused deserves to be quashed and set aside by allowing the appeal and thereby acquitting the accused of the offences with which he was charged. He, therefore, urged to allow the appeal.

4. Mr. RC Kodekar, learned Addl. Public Prosecutor for the respondent – State of Gujarat,

has submitted that though the Panch witness has not supported the prosecution case, that fact by itself cannot be a ground to throw the prosecution case over-board. According to him, all the police witnesses have supported the prosecution case about the recovery and seizure of contraband article brown sugar from the accused, the samples thereof were sent to FSL for chemical analysis and the report of the FSL says that the contraband article is brown sugar. He has also emphasised that the provisions of Sections 42 and 50 of the NDPS Act have been fully complied with and there is no lacuna in the prosecution case and, therefore, the trial court has rightly held the accused guilty of the offence with which he was charged and recorded conviction and sentence which does not warrant any interference in this appeal. Therefore, according to him, the appeal lacks merit and deserves to be dismissed. He, therefore, urged to dismiss the appeal.

5. This court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with NDPS Cases, this Court has examined the entire evidence on record for itself independently of the learned trial Judge and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial court has rightly recorded the order of conviction and sentence.

6. At the outset, be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal

provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder.

In this connection, it would be appropriate to refer to the observations made by the Supreme Court in the case of Bharatbhai Bhagwanjibhai v. State of Gujarat, AIR 2003 SC 7. In para 1 of the said judgment, the Supreme Court has observed as under:

> “The Statement of Objects and Reasons of the NDPS Act categorically records the inadequacy of the existing legislation to combat illicit drug traffic and drug abuse, both at the national and international levels and it is by reason of such deficiencies in the existing laws, the legislature thought it prudent to consolidate the same and bring

about a comprehensive legislation so as to meet the exigencies of the situation. A plain look at the provisions of the NDPS Act read with the Statement of Objects and the Preamble would depict the intent of legislature as regards the offences under the said consolidated legislation, which stands expressed in rather explicit language as one of the most heinous ones in nature. This Court, however, in consonance with criminal jurisprudence of the country has been insisting on strict compliance of the safeguards provided under the statute so as to be in tune therewith".

7. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Supreme Court in the above referred to judgment, we have to find out as to whether in instant case strict compliance of the safeguards provided under the statute have been observed by the Police

Inspector during the course of search of the accused and seizure of the muddamal, contraband article, brown sugar.

8. In this connection, we shall first refer to the evidence of P.W.2, Vijaysinh Laxmansinh Chauhan, Police Inspector, Ex.10, page 33 to 62 of the paper book. He has, inter alia, testified that he is serving with CID State Narcotic Cell. On 23.6.1999 when he was on duty he received a secret information. The said secret information also contained the details so as to enable him to identify the person who was to come with contraband article brown sugar. The said secret information was recorded in the register. He also conveyed the said information to his higher officer i.e., Police Superintendent, Narcotic Cell, in writing. Thereafter he called Panchas as well as members of the raiding party and prepared the preliminary panchnama. Thereafter the raiding party proceeded towards the Narol Circle as per the information received by him and waited there.

When they found a person coming on foot who satisfied all the identification details given by the secret informant, the raiding party apprehended him and inquired whether he was to be searched in presence of a First Class Magistrate or a Gazetted Officer to which the accused said 'No'. Thereafter he was searched and from his possession the contraband article brown sugar was recovered. Thereafter he lodged a complaint against the accused and the investigation was handed over to Uttamkumar Manilal Jadav, who has recorded the statements and sent the muddamal to FSL for analysis through P.W.3, Baldev Chhanaji Mena, ASI, Ex.26 and on receiving the report from FSL saying that the contraband article was brown sugar, charge-sheet was filed against the accused. He has also produced the original register where he has noted the secret information at Ex.11.

He was cross-examined at length by the learned advocate of the accused. But in the

cross-examination nothing could be brought out which would impeach the credibility of his deposition. He successfully withstood the test of cross-examination and, therefore, there is no reason to disbelieve the evidence of P.W.2, Vijaysinh Laxmansinh Chauhan, Police Inspector, Ex.10.

9. The prosecution has thereafter examined P.W.3, Baldev Chhanaji Mena, ASI, Ex.26, page 63 to 66 of the paper book. As per his deposition, at the relevant time, he was working as ASI in Narcotic Cell. He was entrusted the packet of muddamal for sending it to FSL. He delivered the said sample to FSL and he has also made entry in this regard in his office diary.

10. The prosecution has thereafter examined PW.4, Vakhatsinh Jethisinh Solanki, PSO, Ex.28, Page 67 to 80 of the paper book. He was at the relevant time serving in CID Crime Branch Ahmedabad, State Narcotic Cell, on the post of PSO. He has further

testified that as per instructions of Vijaysinh Laxmansinh Chauhan, Police Inspector, he made necessary arrangement to call panchas.

11. The prosecution thereafter examined P.W.5, Uttamkumar Manilal Jadav, PSI, Ex.30, page 81 to 86 of the paper book. He was serving as PSI in Gandhinagar Zone Police Station. He was handed over the investigation of the case. He received sealed packet of the muddamal and kept it in his safe custody. Thereafter on 24.6.1999 he sent the same to FSL for chemical analysis, through P.W.3, Baldev Chhanaji Mena, ASI, Ex.26.

It may be appreciated that all the above witnesses have been subjected to cross-examination at length by the learned advocate of the accused. But nothing objectionable has been brought out from their evidence which would impeach their credibility. In their entire deposition, they have clearly stated all the facts right from the receipt of secret

information by Vijaysinh Laxmansinh Chauhan which was recorded in diary, thereafter compliance of necessary formalities in the presence of panchas, search of the accused and seizure of contraband article from him, sending the muddamal to FSL for chemical analysis, receipt of FSL report, all have been discussed in detail.

12. To prove the complicity of the accused, the prosecution has also examined P.W.1, Laxman Shankar Rao, Panch witness, Ex.9, page 27 to 32 of the paper book. He has not supported the prosecution case, therefore, he was declared hostile and thereafter he was cross-examined by the learned APP. So far as his signature in two parts of the panchnama is concerned, he has admitted the same. However, he has denied that he was in the raid along with the police official. The said Panchnama is at Ex.16. A perusal of the said panchnama at Ex.16 shows that it contained the procedure of raid, search of the accused and seizure of contraband article brown sugar from

the possession of the accused, sealing of the muddamal article brown sugar and affixing of slip. The said panchnama also bears signatures of two panchas i.e., Laxmanrai Shankarrao Tandle and Pradipbhai Kashiram Rajput.

13. On over all appreication of evidence of the witnesses who have received the secret information then carried out the raid and during search the accused was found in possession of brown sugar, complicity of the accused for commission of the offence alleged against him is established beyond reasonable doubt. Necessary provisions contained under Sections 42 (1), 42 (2) and 50 of the NDPS Act have been complied with. Therefore, there is no room of doubt in the prosecution case.

14. It is feebly contended by Mr. Dave, learned advocate of the accused, that panch witness has not supported the prosecution case, therefore, the formalities of search of the accused and

seizure of brown sugar from the possession of the accused and sealing of the brown sugar have not been established and hence the contents of panchnama have not been proved and hence the prosecution case cannot be believed, has no substance and merit.

15. It is well settled that merely because the panch witnesses do not support the case of the prosecution, the case of the prosecution need not be thrown over-board as unreliable. It may be realized that the phenomenon of panch witnesses turning hostile to the prosecution is not unknown and is ever on the increase. It needs hardly to be emphasised that the decision of a case does not depend solely on the question whether the panch witnesses support the prosecution or turn their back on it. If the decision of the case were to depend solely on the testimony of panch witnesses regardless of the evidence of police officers, in theory, it would be giving a right to veto to the panchas so far as the question of

culpability of an accused is concerned, which is not permissible in criminal jurisprudence. It is well settled that without good ground being pointed out, testimony of police officer, if otherwise found to be true and dependable, cannot be discarded by court on the ground that he is a police officer. On the facts and in the circumstances of the case, this Court finds that testimonies of P.W.2, Vijaysinh Laxmansinh Chauhan, Police Inspector, Ex.10, P.W.3, Baldev Chhanaji Mena, ASI, Ex.26, P.W.4, Vakhatsinh Jethisinh Solanki, PSO, Ex.28 and P.W.5, Uttamkumar Manilal Jadav, PSI, Ex.30, are not only inspiring confidence, but, get corroboration from the other evidence on record and from the evidence of the police officers, the contents of the panchnama have been proved and it is given exhibit number as well. Therefore, according to this Court, the said panchnama can be relied upon to decide the complicity of the accused.

16. In view of the aforesaid evidence, there is

no manner of doubt that when the accused was intercepted, apprehended and searched, he was found to be in possession of contraband article brown sugar. Necessary formalities of search and seizure were made in presence of panchas and complied with the requirements and observed all the formalities contained under the NDPS Act, samples were sent to FSL after following the procedures under the NDPS Act.

17. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

18. No new argument is advanced. No new criticism

is offered. No infirmity in the reasoning of the trial court is pointed out. The evidence has been carefully analyzed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of form.

19. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

20. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and hence the appeal lacks merit, deserves to be dismissed.

21. For the foregoing reasons, the appeal fails

and accordingly it is dismissed.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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